



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WAGGONER CARR
ATTORNEY GENERAL

April 4, 1963

Honorable Grainger McIlhany
Chairman
Land Study Committee
House of Representatives
Austin, Texas

Opinion No. C-52

Re: Whether, in view of the prohibitions, restrictions and reverters in H.B. 6, Chapter 68, 36th Leg.; H.B. 164, Chapter 40, 47th Leg.; and H.B. 492, Chapter 253, 49th Leg., the Glasscock Fill Area, located in Corpus Christi Bay, has reverted to the State and related questions.

Dear Sir:

You request an opinion of this office in regard to "The Glasscock Fill Area located in Corpus Christi Bay and presently claimed by private individuals with a chain of title from Corpus Christi." Your request presents the following questions, "in view of the prohibitions, restrictions and reverters" in the Acts referred to in your letter, and herein.

1. Whether the Glasscock Fill Area has reverted to the State.
2. Whether the Glasscock Fill Area, in view of the restrictions as to the public use and benefit, can be lawfully conveyed by the City of Corpus Christi for private use and benefit.
3. If the land has not been forfeited back to the State, what interest the State of Texas and the general public presently have in the above referred to land.

It occurs to us that the true answers to these questions must be found in a correct interpretation and construction of the legislative enactments herein referred to.

House Bill No. 6, Chapter 68, approved March 17, 1919, entitled: "Granting to the City of Corpus Christi certain land lying under the waters of Corpus Christi Bay," contained the following provisions pertinent to the questions presented:

"Section 1. All right, title and interest of the State of Texas to all the land herein-after in this section described lying and being situated under the water of Corpus Christi Bay and within the corporate limits of the City of Corpus Christi, Texas, is hereby granted to the said city for public purposes only; said land so granted being described as follows: All land west of the line beginning at a point in the northern boundary line of the corporate limits of said city of Corpus Christi, Texas, one thousand feet (1,000) from the point of intersection of said northern boundary line with the present shore line of Corpus Christi Bay; thence in a southerly direction to a point in the Southern boundary line of the corporate limits of said city one thousand feet (1,000) east from the point of intersection of the said Southern boundary line with the present shore line of said Bay.

"Sec. 2. The city of Corpus Christi is hereby granted the right, power and authority to locate, construct, own and maintain within said territory hereby granted such sea walls or break waters as may be necessary or desirable into the waters of Corpus Christi Bay, and to fill in the space between the said main land and the sea walls or break waters of Corpus Christi Bay, having first secured a permit from the Federal Government therefor and all area formed by such construction and filling in is hereby declared to be the property of the City of Corpus Christi to be used by said city for public purposes only, and said city shall have the right, power and authority to construct such walks, drives, parks and buildings for public purposes only on all of such area as may be deemed suitable or desirable for such public purposes, and any such building or structure erected may be rented for purposes of a public nature and all proceeds derived from such rental shall be paid into the general fund of the city; provided, however, that the city of Corpus Christi shall not have the right to take from Corpus Christi Bay any sand, dredge spoil or other material except such as may

be necessary for the purpose of filling in between said sea walls or break waters and the main land, and provided that the City of Corpus Christi shall not place or permit the placing of any building other than for ornamental or civic purposes on said area, except within the shipping district as hereinafter defined.

"* * *

"Sec. 8. All mines and minerals and mineral rights including oil and gas in and under said land, together with the right to enter thereon for the purpose of development, are hereby expressly reserved to the State of Texas.

"Sec. 9. This grant to the City of Corpus Christi is upon the express condition, that said city shall within five years from and after the passage of this Act, begin the construction of said sea wall and shall within a period of ten years complete same, and failure to do so shall forfeit the grant.

"Sec. 10. Before the City of Corpus Christi shall begin the improvement herein contemplated, the Commissioner of the General Land Office shall fix a price per acre upon the area herein granted, and when the improvement herein contemplated shall have been completed, a showing of that fact shall be made to the Commissioner of the General Land Office, and the said City of Corpus Christi shall then pay to that officer for the benefit of the public free school fund of this State, the total sum due upon such acreage, and upon such showing and payment the Commissioner of the General Land Office shall issue a patent thereupon when furnished proper field notes by the County Surveyor of Nueces County, Texas.

"Sec. 11. The right is hereby expressly reserved by the State of Texas and the United States Government to erect on the lands herein conveyed such wharves, piers and buildings for State or Government purposes as many hereafter be authorized by law.

"Sec. 12. The fact that the great portion of the business part of the City of Corpus Christi and all of the shipping district is located on the edge of Corpus Christi Bay only a few feet above sea level and the fact that the waves are daily eroding the shore line of said Bay and destroying valuable properties, and the fact that a great number of Texas people and a great number of people living at Corpus Christi and a great number of visitors from the State of Texas and other States are living in small houses on the Bay front and located in such manner as to be wholly unprotected from the gulf storms and the fact that a great number of said houses and nearly all the boats in the shipping district of Corpus Christi were destroyed by the storm of August 18th, 1916, create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days be suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted."

The Glasscock Fill Area comprises approximately 22.47 acres of land, more or less, located on the bayfront at Corpus Christi, Texas. Examination of the property on the ground shows that most of it is filled in along the bayfront except for a small strip of upland along Ocean and Shoreline Drives, being the crest and toe of the Bluff on the westerly side of this tract of land. Except for said strip of upland, the fill area, or land in question, appears to be within the land granted by the State of Texas to the City of Corpus Christi in the above statute. It appears that substantial improvements have been made to this land in the way of fill work and a concrete retaining wall.

The State of Texas issued a patent on the 4th day of January, 1924, granting to the City of Corpus Christi 705.78 acres of land described therein embracing a portion of the waters of Corpus Christi Bay east of its shore line, and between the northern and southern boundary lines of the City of Corpus Christi, "bought and fully paid for on the application of City of Corpus Christi, filed in the General Land Office November 3, 1923, under Act of March 17, 1919," and providing "all mines and minerals, and mineral rights including oil and gas in and under said land, together with the right to enter thereon for the purpose of development, are expressly reserved to the State of Texas."

The application for patent filed in the General Land Office November 3, 1923, states:

" . . . After the passage of the Act of 1919, and in the year 1920, the City of Corpus Christi began the construction of a rip rap breakwater in the waters of Corpus Christi Bay as contemplated by both Acts of the Legislature and for which the funds were provided by the Act of 1917, and has completed said breakwater as contemplated, having constructed 3900 feet of rip rap breakwater at a cost in all to the City of something more than \$630,000.00. The seawall or breakwater contemplated by the Act of 1917 and the Act of 1919 has been completed. . . ."

A copy of a report dated January 4, 1963, by C. M. Reynolds, Public Works Coordinator, City of Corpus Christi, Texas, states:

" . . . Findings indicate with reasonable certainty that the construction, referred to in the patent to the City, was actually completed and accepted, with final payment to the contractor approved, on 5 August 1921. Work completed consisted of the first stage of the Breakwater, being a portion of the Central Arc, as it now exists. A review of the plans in our files indicates the 3900 lineal feet to be approximately correct. . . ."

The City of Corpus Christi, Texas, by special warranty deed dated March 15, 1937, executed by H. R. Giles, Mayor, conveyed to C. M. Gordon et ux, certain property in Corpus Christi Bay, being part of the land granted to the City of Corpus Christi, Texas, by H.B. 6, Chapter 68, approved March 17, 1919 (above). The deed provided that:

" . . . Grantees shall, at his own cost and expense, raise and fill the area herein conveyed to city grade level and shall conform to the Bay Front Improvement Plan of the City of Corpus Christi, when adopted, in the use and improvement of the property conveyed to them in this deed."

The deed further provided that:

" . . . Grantees and grantor shall cooperate in securing a decree of the court or a legislative act, or both, which will quiet the title to the property herein conveyed as against claims of the general public, if any, to said property. . . ."

The City Council of the City of Corpus Christi passed and approved on the 7th day of April, 1937, a resolution authorizing and directing the execution of a deed to this property to C. M. Gordon et ux. The pertinent parts of this resolution are as follows:

"A resolution authorizing and directing the mayor of City of Corpus Christi on behalf of the City to execute a deed from the City of Corpus Christi to C. M. Gordon and wife for the exchange of certain property rights in connection with a tract of land situated within the city limits and bordering on Corpus Christi Bay and declaring an emergency.

"BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI:

"Section 1: That the Mayor of the said city of Corpus Christi, the Honorable H. R. Giles, be, and he is hereby authorized and directed to execute a deed conveying the tract of land hereinafter first described, to C. M. Gordon and wife, Mrs. C. M. Gordon, of San Antonio, Bexar County, Texas, in exchange for the property rights as hereinafter secondly described, which said deed shall be in substance in the same form as deeds heretofore executed by the City of Corpus Christi, to riparian property owners, for the exchange of like property interests along the bay shore of Corpus Christi Bay, adjacent to the City of Corpus Christi, Texas, the land to be conveyed by the City being situated in Nueces County, Texas and described as follows, to wit:

"* * *

"Section 2: The fact that the Bluff along Ocean Drive in the city limits of the City of Corpus Christi has been eroding and is subject to

continued erosion, endangering the safety and protection of Ocean Drive, along the west boundary line of the lands herein referred to, and that the exchange of such property rights would encourage and enable the protection of such property and Ocean Drive, and that the protection of the properties involved creates a public emergency and a public imperative necessity requiring the suspension of the Charter rule providing that no Resolution or Ordinance shall be passed finally on the date it is introduced, and that such Ordinance or Resolution shall be read at three meetings of the City Council, and that the Mayor having declared that such public emergency and imperative necessity exists, and requests that said Charter rule be suspended, and that this Resolution take effect and be in full force and effect from and after its passage, and it is accordingly so ordained. . . ."

The land in question by mesne conveyances was deeded to C. G. Glasscock, and then to Scotch Investment Company, a private Texas corporation, and is known as the Glasscock Fill Area.

In 1941, the Legislature enacted House Bill No. 165, Chapter 40, filed without the Governor's signature March 14, 1941, effective March 17, 1941, which is set forth as follows:

"CORPUS CHRISTI--TITLE GRANTED TO
CERTAIN SUBMERGED LANDS

"H.B. No. 165

CHAPTER 40.

"An Act granting to the City of Corpus Christi, Texas, all right, title and interest of the State of Texas to certain land hitherto submerged by the waters of Corpus Christi Bay; ratifying and confirming exchanges and conveyances of property within the area to certain private owners; reserving the minerals unto the State; declaring that the Act shall be cumulative of former grants and authorities; and declaring an emergency.

"Be it enacted by the Legislature of the State of Texas:

"Section 1. All right, title and interest of the State of Texas in and to all land within the area hereinafter mentioned, hitherto or now lying and situated under the waters of Corpus Christi Bay, is hereby relinquished, confirmed, and granted unto the said City of Corpus Christi, its successors and assigns, for public purposes, to-wit:

"Beginning at the northeasterly corner of the city limits of the City of Corpus Christi; thence southerly along said east boundary line of said city to its southeasterly corner; thence westerly along the south boundary line of said city to its intersection with Ocean Drive; thence northerly along Ocean Drive, Bay View Avenue, South Water Street, Water Street and the projection or extension thereof to the north boundary line of said city limits; thence easterly along said city limits to the point of beginning.

"Sec. 2. All exchanges of property and conveyances hitherto made by the City of Corpus Christi to property owners within the area described in Section 1 are hereby ratified; and such property is confirmed, relinquished, and granted unto the respective assignees of the City of Corpus Christi, and to their heirs, successors and assigns, without limitation as to use thereof to be made by them.

"Sec. 3. All mines and minerals, and the mineral rights including oil and gas in and under said land, together with the right to enter thereon for the purpose of developing, are hereby expressly reserved to the State.

"Sec. 4. This Act shall be and is cumulative of all former grants and authority from the State of Texas to the City of Corpus Christi.

"Sec. 5. The fact that Chapter 68, Acts of Thirty-sixth Legislature, 1919, granted to the City of Corpus Christi all title of the State to the submerged lands within the area described

in this Act but the field notes of the patent issued pursuant thereto omitted certain submerged tracts that had theretofore been filled; that the City of Corpus Christi has found it necessary to exchange certain property and convey to the owners of adjacent private property a portion of the filled land within such area, in efforts to quiet City's title, and such private property owners desire to be quieted in their title, possession and use of such property so conveyed; and that it is necessary to the completion of the City's bay front improvement and storm protection project that its title be quieted, create an emergency and an imperative necessity that the Constitutional Rule requiring bills to be read on three several days be suspended, and said Rule is so suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted." (Emphasis added.)

It is noted that the caption of House Bill No. 165, Chapter 40, effective March 17, 1941, above, refers "to certain land hitherto submerged by the waters of Corpus Christi Bay." Your letter states, and investigation reflects, that the Glasscock Fill Area was not filled in until deeded to C. G. Glasscock in 1954.

In 1945 the Legislature enacted House Bill No. 492, Chapter 253, effective May 28, 1945, confirming the original grant in the 1919 Act above as to "that filled in land lying landward behind the seawall for public purposes." The pertinent provisions of this Act are set forth as follows:

"An Act to grant, sell and convey to the City of Corpus Christi, Texas, all right, title and interest of the State of Texas to certain land in said City hitherto submerged by the waters of Corpus Christi Bay; . . .

"Section 1. All right, title and interest of the State of Texas in and to all land within the area hereinafter mentioned, hitherto lying and situated under the waters of Corpus Christi Bay for and in consideration of the sum of Ten Thousand Dollars (\$10,000) cash, is hereby relinquished, confirmed and granted unto the said City of Corpus Christi, its successors and assigns, for public purposes, to-wit:

"Being all of that filled-in land lying and being situated in Nueces County, Texas, landward behind the seawall and easterly of the shoreline of Corpus Christi Bay as shown in Survey No. 803 and in the patent from the State of Texas to the City of Corpus Christi, Texas, said patent being dated January 4, 1924, and being Patent No. 86, Volume 21-A. . . ." (Emphasis added.)

It is noted that House Bill No. 492, Chapter 253, effective May 28, 1945, referred to "all of that filled-in land lying and being situated in Nueces County, Texas, landward behind the seawall and easterly of the shoreline of Corpus Christi Bay." Your letter states, and examination on the ground, indicates that the Glasscock Fill Area is not situated landward behind the seawall.

The questions presented in your letter, stated above, require a true and correct interpretation and construction of the related statutes herein set forth. Black's Law Dictionary, 3rd Edition, defines "construction" thus:

"The process, or the art, of determining the sense, real meaning, or proper explanation of obscure or ambiguous terms or provisions in a statute, written instrument, or oral agreement, or the application of such subject to the case in question, by reasoning in the light derived from extraneous connected circumstances or laws or writings bearing upon the same or a connected matter, or by seeking and applying the probable aim and purpose of the provision. Quoted with approval in *Koy v. Schneider*, 110 Tex. 369, 221 S.W. 880, 884."

Black's Law Dictionary, 3rd Edition, further stated at page 1000:

"'Construction' is a term of wider scope than 'interpretation'; for while the latter is concerned only with ascertaining the sense and meaning of the subject matter, the former may also be directed to explaining the legal effects and consequences of the instrument in question. Hence interpretation precedes construction but stops at the written text."

House Bill No. 6, Chapter 68, approved March 17, 1919, set forth above, granting to the City of Corpus Christi certain land lying under the waters of Corpus Christi Bay, including the Glasscock Fill Area, granted the land "to the said city for public purposes only." Section 9 of the Act provided that "this grant to the City of Corpus Christi is upon the express condition, that said city shall within five years from and after the passage of this Act, begin the construction of said seawall and shall within a period of ten years complete same and failure to do so shall forfeit the grant."

In 4 Lange, Texas Practice, Land Titles, Section 340, it is stated that:

"If the language imposes a duty on the grantee to do something, or to refrain from doing something, or that only a certain use shall be made of the property, then it may not be construed as a special limitation and must be construed either as a condition subsequent or as a covenant. Normally, also, there must be language of re-entry if a condition subsequent is created, and language of reversion or revesting of the property in the case of a determinable fee. Further, as concerns conditions, a forfeiture is generally only decreed if the grantee, his heirs, successors or assigns, refuse to comply with such conditions.

". . . a breach of a condition does not operate ipso facto as a forfeiture of the estate; nothing short of an actual entry will serve to defeat an estate upon a condition which has been broken; . . ."

In Section 341, same volume, it is stated that:

". . . a condition subsequent is one which operates upon an estate already created and vested and renders it liable to be defeated, but not as a limitation of the grantee's title. Any doubt as to the type of condition, whether precedent or subsequent, is resolved in the view that such condition is a condition subsequent rather than a condition precedent. The remedy of a grantor upon condition broken is by way of trespass to try title action and not by way of suit to rescind or cancel the deed. . . ."

In City of Dallas v. Etheridge, 152 Tex. 9, 253 S.W.2d 640 (1952), the Supreme Court, Chief Justice Robert W. Calvert, then Associate Justice, held that where condition in conveyance of a tract of land to city provided that city should use the land for park purposes only, that no building or other improvements should be erected upon certain portion of the tract, and that the violation of any of the provisions of the conveyance would at grantor's option terminate the grant, the condition was a condition subsequent, and hence, the construction by city of a street across such restricted portion was a breach of condition which would entitle grantor's successors in interest to exercise the option and to maintain trespass to try title action to recover possession.

In Zachry v. City of San Antonio, 305 S.W.2d 558 (1957), the Supreme Court, Griffin Justice, held that where land had been used as a public park for more than 100 years, and there was never any abandonment of the park, lease of a portion of the park by the city to an individual for 40 years for the construction of an underground parking garage was void. The court said that "all such property (acquired for and actually dedicated to the public use of its inhabitants) is held by the municipality in trust for the use and benefit of its citizens, and is dedicated to the use of the public, and the corporation cannot divest itself of title without special authority from the Legislature. It is only where the public use has been abandoned, or the property has become unsuitable or inadequate for the purpose to which it was dedicated that a power of disposition is recognized in the corporation."

Section 8, Article XI of the Texas Constitution reads as follows:

"Sec. 8. The counties and cities on the Gulf Coast being subject to calamitous overflows, and a very large proportion of the general revenue being derived from those otherwise prosperous localities, the Legislature is especially authorized to aid by donation of such portion of the public domain as may be deemed proper, and in such mode as may be provided by law, the construction of sea walls, or breakwaters, such aid to be proportioned to the extent and value of the works constructed, or to be constructed, in any locality."

In Attorney General's Opinion No. O-6817 (1945), it was held as follows:

" . . . When, as an engineering fact, it is necessary to replace, raise, and strengthen the inside bulkheads of the retaining wall in order to support the outside seawall, it is our opinion based on the foregoing authorities, that such construction would constitute 'an essential and necessary and component part of the seawall project' at Port Lavaca, Texas. . . ."

Attorney General's Opinion No. 0-6817 (1945) cites pertinent authorities as follows:

" . . . In the case of the First National Bank of Port Arthur v. City of Port Arthur et al, 35 S.W. (2d) 258, the Beaumont Court of Civil Appeals said:

" 'Counsel for appellees, in their brief, call our attention to a number of general rules of construction pertaining to constitutional provisions. One of these rules is that referred to by our Supreme Court in Walker v. Meyers, 114 Tex. 225, 266 S.W. 499. The general rule there referred to is that contemporaneous and practical construction of constitutional provisions by the Legislature in the enactment of laws should have great weight and give rise to a natural presumption that the legislative construction rightly interprets the meaning of the provision. In connection with this general rule, counsel for appellee in their brief direct our attention to the several acts at different times of the Texas Legislature granting aid to Gulf Coast cities under section 8, article 11, of the Constitution. One of these is the act granting aid to the city of Galveston shortly after the destructive gulf hurricane in 1900. Another is the act granting aid to the city of Corpus Christi; another is the act granting aid to the city of Freeport; another is the act granting aid to the city of Rockport; another is the act granting aid to the city of Port Lavaca; another is the act granting aid to the city of Aransas Pass. In this connection counsel contend, and undertake to sustain the contention, that the Legislature in each of the instances above stated gave a broad and liberal

construction to section 8 of article 11 of the Constitution and that the Legislature in those instances did not construe that section to limit state aid to Gulf Coast cities for the construction of sea walls and breakwaters, that is, to those physical structures themselves, but construed section 8 in a broad way so as to give aid to those Gulf Coast cities in the construction of works not actually a part of a sea wall or breakwater. We shall not dwell upon this suggestion of counsel, though we are impressed with the force of this suggestion and the argument in connection. Other general rules of interpretation and construction may be said to be the following:

"'1. The intention of the makers of the Constitution will be ascertained, and when that intention is so ascertained, whether expressed in plain language or not, such intent becomes as much a part of the law as if it had been expressed in plain and unequivocal terms. This was the rule announced by our Supreme Court in *Mills County v. Lampasas County*, 90 Tex. 606, 40 S.W. 403.

"'2. Legislation, organic or statutory, must be reasonably construed and in a manner not repugnant to common sense. This rule is announced in *Queen Insurance Co. v. State*, 86 Tex. 250, 24 S.W. 397, 22 L.R.A. 483, and in *St. Louis S.W. Railway Co. of Texas v. Tod*, 94 Tex. 632, 64 S.W. 778.

"'3. A public grant for a public advantage should be liberally construed in an endeavor to accomplish the purpose of the grant. This rule was announced in *Aransas County v. Coleman-Fulton Pasture Co.*, 108 Tex. 216, 191 S.W. 553.

"'4. In construing a law it will be presumed that the creators of same are familiar with the conditions to be relieved against and the condition of the county to which the act is applicable. *Winona & St. P.R. Co. v. Barney*, 113 U.S. 625, 5 S.Ct. 606, 28 L.Ed. 1109.

"'5. If possible, that construction will be adopted which will promote the public interests in accord with sound economic policy. This rule was referred to in State v. DeGress, 72 Tex. 242, 11 S.W. 1029.

"'6. In the construction of Constitutions, as well as statutes, the powers necessary to the exercise of power clearly granted will be implied. This rule was referred to in Texas Cent. R. Co. v. Bowman, 97 Tex. 417, 79 S.W. 295.

"'7. Where a general power is conferred, every particular power necessary for the exercise of same is also conferred, whether expressly granted or not. This is the rule laid down in Cooley's Constitutional Limitations (8th Ed.) vol. 1, page 138.

"'In addition to the above general rules of interpretation, we think that the rule announced by our Supreme Court, through Chief Justice Phillips, in Aransas County et al. v. Coleman-Fulton Pasture Company, 108 Tex. 216, 191 S.W. 553, 554, where section 52 of article 3 of our Constitution was under construction, is the rule of greatest application to the facts in this case. It is as follows:

"'The spirit, purpose and scope of the particular provision are all to be consulted in the effort to determine with certainty the meaning of its terms."

"'Applying that rule in this case, we have no hesitancy in concluding that the expenditure by the city of Port Arthur of its bond money above mentioned for the work done by the Central Construction Company in constructing the Stilwell Storm Drain was not prohibited and would not be in violation of section 8, article 11, of the Constitution. The spirit and the purpose that actuated the framers of that article was mainly the protection of the lives and property of people in cities situated on the Gulf Coast and always exposed to danger and hazard of the sea. Protection to those people and their property, we say,

was the main and controlling thought, and in addition to that, and as incidental to that, was the benefit that would redound and accrue to the people of the whole state of Texas by protecting such of its citizens as live in the exposed cities. It was known that many Texas counties and cities were so situated upon the Gulf Coast as to be constantly exposed to the ravages and destruction of gulf hurricanes, and the purpose of the framers of the article was to give protection, as far as possible through human skill and agency, to the lives and property of our citizens exposed to such hazards.

"We think that the trial court, under the evidence in this case, was correct in finding and concluding that the construction of the Stilwell Storm Drain, as contemplated, was an essential and necessary and component part of the sea wall project at Port Arthur, and that therefore the Stilwell Storm Drain when completed will be a part of the sea wall in the sense in which that term is used in section 8, article 11, of the Constitution.' . . ."

In the case of City of Aransas Pass et al. v. Keeling, 112 Tex. 339, 247 S.W. 818, the Supreme Court in the opinion by Justice Greenwood stated:

"This suit is brought by the city of Aransas Pass and by the mayor of said city against the Attorney General of the state of Texas, for a mandamus to compel the approval of bonds, issued by the city in the principal sum of \$213,000.

"The Thirty-Sixth Legislature, at its third called session, passed an act (Acts 36th Leg. 1920 3d Called Sess. c. 22) which became effective on September 17, 1920 entitled:

"An act to aid the City of Aransas Pass in constructing and maintaining sea walls, breakwaters and shore protections in order to protect said city from calamitous overflows, by donating to it the eight-ninths (8/9) of ad valorem taxes

collected on property and from persons in San Patricio county for a period of twenty years, providing a penalty for the misapplication of the moneys thus donated, and declaring an emergency.'

"* * *

"The Attorney General urges that the donation act is unconstitutional and void for the following reason:

"* * *

"Second. That the act violates section 51 of article 3 of the Constitution, denying power to the Legislature to make any grant of public money to a municipal corporation.

"* * *

"The act makes no grant of public money as forbidden by section 51 of article 3 of the Constitution. The state here bestows no gratuity. The people of the state at large have a direct and vital interest in protecting the coast cities from the perils of violent storms. The destruction of ports, through which moves the commerce of the state, is a state-wide calamity. Hence sea walls and breakwaters on the Gulf coast, though of special benefit to particular communities, must be regarded as promoting the general welfare and prosperity of the state. It is because of the special benefits to particular cities and counties that special burdens on property within their boundaries, through taxation, are justified. But the state, in promoting the welfare, advancement, and prosperity of all her citizens or in aiding to avert injury to her entire citizenship, cannot be regarded otherwise than as performing a proper function of state government. Cities or counties furnish convenient and appropriate agencies through which the state may perform duties resting on the state, in the performance of which the cities or counties have a special interest.

The use of the cities or counties as agents of the state in the discharge of the state's duty is in no wise inhibited by the Constitution in section 51 of article 3. Bexar County v. Linden, 110 Tex. 344 to 348, 220 S.W. 761; City of Galveston v. Posnainsky, 62 Tex. 127, 50 Am. Rep. 517; Weaver v. Scurry County (Tex.Civ.App.) 28 S.W. 836.

"We have concluded that section 8 of article 11 of our Constitution expressly authorized the Legislature to grant such aid to the counties and cities on the Gulf coast in the construction of sea walls and breakwaters, as was extended to Aransas Pass. This section reads:"

Section 8, Article XI quoted above.

"* * *

"While these words admit of the interpretation that state aid to these works was to be extended only by donation of the public domain in a mode to be determined by the Legislature, yet they are obviously as susceptible of the meaning that the Legislature was empowered to extend state aid in any different manner adopted by the Legislature. Viewed in the light of other related constitutional provisions, we have no doubt that the latter is the true meaning to be ascribed to the section. The express wording of the section recognizes a state interest and a state obligation in the protection of coast settlements from calamitous overflows. It must have been known that before many years the public domain would be exhausted. It would be unreasonable to assume that the framers of the Constitution did not intend to make it possible for the Legislature to discharge an obligation which would be just as binding after as before the exhaustion of the public domain. The provision for state aid immediately follows provision for the construction by coast cities and counties of sea walls and breakwaters through taxation and bond issues. By section 10 of Article 8 the Legislature was expressly empowered to entirely release state and

county taxes 'in case of great public calamity.' Can sound reasons be given for asserting that it was intended to authorize the state to extinguish all obligations in certain subdivisions of the state for the payment of state and county taxes, for such period as the Legislature might deem necessary, because of great public calamity, and yet not allow relief to the sufferers from such calamity and benefit to all the people of the state through the utilization of the same taxes in building protective works? Any doubt as to the intent of the Constitution to authorize the grant of public money in case of public calamity is removed by the language of original section 51 of article 3 of the Constitution. For it expressly provided that the denial to the Legislature of the power to make 'any grant, of public money' should 'not be so construed as to prevent the grant of aid in case of public calamity.' Keeping in mind these related provisions of the Constitution, it seems clear to us that it was the design of section 8 of article 11, when it was adopted, to empower the Legislature to give the state's aid, by grant of the public domain or state taxes, or in any other appropriate manner, to the construction by coast cities and counties, through bond issues, of protective sea walls and breakwaters; and that, in the exercise of this power, the Legislature was not limited by the terms of section 6 of article 8, forbidding the appropriation of public money for a longer period than two years. . . ."

(Emphasis added.)

In 1930 the Legislature passed House Bill No. 90, Chapter 42, "CONFERRING AUTHORITY ON CITY OF CORPUS CHRISTI RELATING TO CHANNEL AND SHIPPING DISTRICT."

Section 1 provided:

"That section 6 of Chapter 68, General Laws of the 36th Legislature, Regular Session, 1919, be amended so that said Section shall hereafter read as follows:

". . . 'The city of Corpus Christi is hereby authorized to adjust by suit or otherwise or adopt compromise by ordinance, determining, defining and

fixing the boundary line between the area patented by virtue of said Chapter 68 and the private property and the rights and claims of property owners along the shore line of Corpus Christi Bay and thereby adjust and quiet the title to said patented area (for the purposes designated in said Chapter 68) and adjust and quiet the title of said private property owners."

House Bill No. 165, Chapter 40, supra, passed by the Legislature in 1941 covered the area where the Glasscock Fill is located, as shown in the description of the property covered by the 1941 Act. It is true that the caption of the 1941 Act refers to "certain land hitherto submerged by the waters of Corpus Christi Bay."

Webster's New International Dictionary, 2nd Edition, Unabridged, defines the word hitherto as, "up to this time; as yet; until now." Black's Law Dictionary, 4th Edition, defines the word hitherto as, "in legal use this term always restricts the matter in connection with which it is employed to a period of time already passed. Mason v. Jones, 13 Barb. (N.Y.) 479."

Section 1 of the 1941 Act refers to "all land within the area hereinafter mentioned, hitherto or now lying and situated under the waters of Corpus Christi Bay."

As stated above, the Glasscock Fill Area was not filled in until 1954. Accordingly, it is consistent that the 1941 Act included the Glasscock Fill Area even though it was submerged at the time of the Act. As shown above, the City of Corpus Christi, Texas, conveyed the area now known as the Glasscock Fill Area, to C. M. Gordon et ux by deed dated March 15, 1937.

Section 2 of the 1941 Act, supra, provides:

"All exchanges of property and conveyances hitherto made by the city of Corpus Christi to property owners within the area described in Section 1 are hereby ratified; and such property is confirmed, relinquished, and granted unto the respective assignees of the City of Corpus Christi, and to their heirs, successors and assigns, without limitation as to use thereof to be made by them."

It is therefore apparent that this section of the 1941 Act is applicable to the Glasscock Fill Area conveyed by the City of Corpus Christi to C. M. Gordon et ux on March 15, 1937.

As shown above, Section 2 of the resolution by the City Council of the City of Corpus Christi, approved April 7, 1937, authorizing this conveyance to C. M. Gordon et ux, provided:

"The fact that the Bluff along Ocean Drive in the city limits of the City of Corpus Christi has been eroding and is subject to continued erosion endangering the safety and protection of Ocean Drive, along the west boundary line of the lands herein referred to, and that the exchange of such property rights would encourage and enable the protection of such property and Ocean Drive, and that the protection of the properties involved creates a public emergency and a public imperative necessity . . ."

(Emphasis added.)

As above stated, the deed by the City of Corpus Christi, Texas, to C. M. Gordon et ux, provides:

". . . Grantees shall, at his own cost and expense, raise and fill the area herein conveyed to city grade level and shall conform to the Bay Front Improvement Plan of the City of Corpus Christi, when adopted, in the use and improvement of the property conveyed to them in this deed." (Emphasis added.)

In the First National Bank of Port Arthur v. City of Port Arthur, et al case, supra, the opinion states:

". . . Counsel for appellant and the Attorney General in this connection direct our attention to the definition of the term 'sea wall,' as given by the New Century Dictionary, volume 4, page 411. As there defined, a sea wall is:

"'A cliff by the sea, a wall formed by the sea; a strong wall or embankment on the shore designed to prevent encroachment of the sea to form a breakwater. An embankment of stone thrown up by the waves on a shore.'"

It is clear, therefore, that the exchange and the conveyance by the City of Corpus Christi to C. M. Gordon ex ux of the area now known as the Glasscock Fill Area, as part of the exchange, was for public purposes in connection with the Bay Front Improvement Plan of the City of Corpus Christi, and was in exchange for land needed by the City of Corpus Christi for its Bay Front Improvement Plan, as contemplated by the statutes, and therefore was for a public purpose.

In view of the above authorities and reasons stated, it is therefore clear that this conveyance by the City of Corpus Christi to C. M. Gordon et ux of the area comprising the Glasscock Fill was for a public purpose and therefore is not in violation of Article 3, Section 51 of the Constitution of Texas, which provides:

"Sec. 51. The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever; . . ."

and is not in violation of Article 3, Section 44 of the Constitution of Texas, which provides:

"The Legislature shall . . . nor grant, by appropriation or otherwise, any amount of money out of the Treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by pre-existing law; . . ."

and is not contrary to the holding of the court in State v. Perlstein, et al, 79 S.W.2d 143 (Civ.App. 1935, error dismissed), which held under the facts in that case a conveyance of State land to a private individual void ". . . because the officers executing it had no authority in law to do so. . . ."

Therefore, in view of the above authorities, when this land was originally granted to the City of Corpus Christi under the 1919 Statute, supra, the grant was made with the condition subsequent that the seawall be completed as provided in the statute. It appears that the seawall or breakwater has been completed as contemplated by the statute and thereafter a patent was issued by the State of Texas to the

City, providing that the land was bought and fully paid for on the application of City of Corpus Christi. Even in the event of a condition broken, the remedy of a grantor is by way of trespass to try title action to recover possession and not by ipso facto reverter. The exchange was for public purposes and in furtherance of the State's interest and the State's obligation to protect coast settlements from calamitous overflows, in connection with the Corpus Christi Bay Front Improvement Plan, and the conveyance was for land needed by the City as contemplated and authorized by Section 8 of Article XI, and as authorized and confirmed by the statutes. The 1930 Act authorized the exchange for such public purposes and the 1941 Act validated it, and the Legislature stated in the Act that the exchange was "necessary to the completion of the City's bay front improvement and storm protection project." This exchange of properties as authorized and later ratified by the Legislature was clearly for the purpose for which the original grant was made.

Therefore, your first question is answered that the Glasscock Fill Area has not reverted to the State. Your second question is answered that the Glasscock Fill Area has been lawfully conveyed by the City of Corpus Christi, as it was for exchange of land needed to further the State's interest and the State's obligation to protect coast settlements from calamitous overflows, and such exchange was for a State public purpose. Your third question is answered that the State of Texas presently owns all mines and minerals, and mineral rights including oil and gas in and under the Glasscock Fill Area, together with the right to enter thereon for the purposes of development.

SUMMARY

1. The Glasscock Fill Area has not reverted to the State.

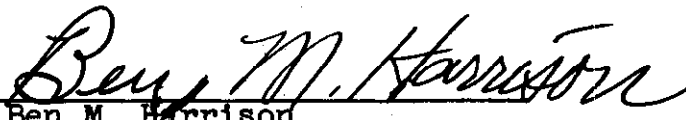
2. The Glasscock Fill Area has been lawfully conveyed by the City of Corpus Christi, as it was for exchange of land needed to further the State's interest and the State's obligation to protect coast settlements from calamitous overflows, and such exchange was for a State public purpose.

Honorable Grainger McIlhany, page 24 (C-52)

3. The State of Texas presently owns all mines and minerals, and mineral rights including oil and gas in and under the Glasscock Fill Area, together with the right to enter thereon for the purposes of development.

Yours very truly,

WAGGONER CARR
Attorney General of Texas

By 
Ben M. Harrison
Assistant

BMH:afg

APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman

H. Grady Chandler
J. S. Bracewell
Edward Moffett

APPROVED FOR THE ATTORNEY GENERAL
BY: Stanton Stone